IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

KEITH EUGENE LENTZ	**:**	**CIVIL ACTION**
	:	
v.	**:**	**NO. 02-7403**
	:	
DONALD T. VAUGHN, et al.	**:**	

MEMORANDUM AND ORDER

Kauffman, J. **January 18, 2006**

Pro se Plaintiff Keith Eugene Lentz ("Plaintiff"), an inmate currently incarcerated at the State Correctional Institution at Graterford ("SCI-Graterford"), brings this action under 42 U.S.C. § 1983 against SCI-Graterford Superintendent Donald T. Vaughn, Deputy Superintendent David Diguglielmo, Major Francis Feild, and Corrections Officer James Majikes (collectively, "Defendants"). The Complaint requests declaratory and injunctive relief and punitive damages for alleged violations of Plaintiff's federal and state constitutional rights when he was removed from the general prison population and placed in a more restrictive special needs unit.

By Order dated March 10, 2004, this Court granted in part and denied in part Defendants' Motion to Dismiss, dismissing Plaintiff's state law claims, as well as his Fifth and Fourteenth Amendment Due Process claims. The Court did not dismiss Plaintiff's First or Eighth Amendment claims. However, subsequent to the March 10 Order, Plaintiff voluntarily withdrew his Eighth Amendment claim and his claims against Superintendent Vaughn and Deputy Superintendent Diguglielmo. Accordingly, the only claim remaining is Plaintiff's First Amendment retaliation claim against Major Feild ("Feild") and Corrections Officer Majikes

("Majikes")[1]. Now before the Court is Defendant's Motion for Summary Judgment pursuant to Fed. R. Civ. P. 56. For the reasons stated below, the Court will grant the motion.

I. Background

After serving a fifteen-year prison sentence in California, Plaintiff was transferred to the Pennsylvania state correctional system to begin a forty to eighty year sentence. See Deposition of Keith Eugene Lentz, October 15, 2004 ("Lentz Dep."), at 6:13-18. Upon his arrival at SCI-Graterford in October 1999, Plaintiff, who takes anti-psychotic medications such as Haldol and Zyprexa, was placed in Special Needs Unit 2 ("SNU 2"). Id. at 9:1-5, 17:12, 5:1-3. After being diagnosed as "confused and depressed," Plaintiff was transferred to a Mental Health Unit ("MHU"). Id. at 16:2-6. While in the MHU, Plaintiff tried to starve himself to death. Id. at 16:11-13. After a few months, Plaintiff's condition improved and he was returned to SNU 2 until February 2002, when he was transferred to a temporary housing unit ("THU") to make room for incoming inmates. Id. at 19:1-7, 27:1-2, 25:3-20, 27:8-12.

In May 2002, Plaintiff had an incident with Correctional Officer Clayton ("CO Clayton"). Id. at 28:20-21. Plaintiff had been in the shower for twenty minutes when CO Clayton told him that he needed to get out because he was taking too long. Id. at 29:12-23. Plaintiff challenged CO Clayton, saying that there was no rule that limited his time in the shower. In response, CO Clayton issued Plaintiff a direct order to leave the shower. Id. at 30:1-19.

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[1] Defendants note in their Motion for Summary Judgment that the claims against Majikes must be construed as due process claims since Majikes' only role was to deliver notice to Plaintiff of the decision to place him in administrative detention. Defendants argue that Majikes was constructively dismissed by the Court's March 10 Order dismissing the due process claims. Plaintiff does not dispute this in his Opposition brief. Accordingly, the Court will treat the Motion for Summary Judgment as if it were made on behalf of Feild alone, the only Defendant remaining in this action. The Court will hereinafter refer to Feild as "Defendant".

Later in May, Plaintiff had another incident with a prison staff member. Id. at 32:10-14. During a conversation with Counselor Whitley in her office, Plaintiff, who had been helping other inmates with legal matters, was told that he could provide legal advice to only one inmate at a time. Id. at 33:18-20. Plaintiff objected but Counselor Whitley responded that she was not going to go "back and forth" with Plaintiff on the matter so he left her office. Id. at 34:3-7.

On May 21, 2002, Plaintiff was summoned to the Unit Manager's office. After a discussion about transferring Plaintiff to another housing unit, Defendant asked Plaintiff about the incidents with CO Clayton and Counselor Whitley. Id. at 50:14-20. Plaintiff and Defendant argued about the appropriateness of Plaintiff's actions. Id. at 51:4-24. Plaintiff attempted to end the conversation and told Defendant he was "done talking to him." Id. at 53:17-19. Instead, Defendant informed Plaintiff that he was transferring him to Special Needs Unit One ("SNU 1"), a more restrictive special needs unit. Id. at 53:21-24. Plaintiff spent the next ninety-four days in SNU 1. Lentz Dep. at 59:13.

Defendant brings this Motion for Summary Judgment arguing that: (1) the undisputed facts provide no basis for a First Amendment retaliation claim; and, (2) even if Plaintiff's First Amendment rights were violated, Defendant, in his individual capacity, is entitled to qualified immunity from damages.

II. Legal Standard

In deciding a motion for summary judgment pursuant to Fed. R. Civ. P. 56, the test is "whether there is a genuine issue of material fact and, if not, whether the moving party is entitled to judgment as a matter of law." Med. Protective Co. v. Watkins, 198 F.3d 100, 103 (3d Cir. 1999) (quoting Armbruster v. Unisys Corp., 32 F.3d 768, 777 (3d Cir. 1994)). "[S]ummary

judgment will not lie if the dispute about a material fact is 'genuine,' that is, if the evidence is such that a reasonable jury could return a verdict for the nonmoving party." Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986). The Court must examine the evidence in the light most favorable to the non-moving party and resolve all reasonable inferences in that party's favor. Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 587-88 (1986) (citing United States v. Diebold, Inc., 369 U.S. 654, 655 (1962)). However, "there can be 'no genuine issue as to any material fact' . . . [where the non-moving party's] complete failure of proof concerning an essential element of [its] case necessarily renders all other facts immaterial." Celotex Corp. v. Catrett, 477 U.S. 317, 322-23 (1986).

The party moving for summary judgment bears the initial burden of showing the basis for its motion. See Shields v. Zuccarini, 254 F.3d 476, 481 (3d Cir. 2001). If the movant meets that burden, the onus then "shifts to the non-moving party to set forth specific facts showing the existence of [a genuine issue of material fact] for trial." Id.

III. Analysis

To state a cause of action under 42 U.S.C. § 1983, Plaintiff must show that: (1) Defendant acted under color of state law; and, (2) Defendant's actions deprived him of rights secured by the United States Constitution or federal statutes. Kost v. Kozakiewicz, 1 F.3d 176, 184 (3d Cir. 1993). In this case, it is not disputed that during the relevant time period, Defendant acted as an official of the Pennsylvania Department of Corrections, an executive agency of the state government. 71 P.S. § 61. Thus, the issue is whether Plaintiff has sufficiently alleged that Defendant deprived him of his rights under the United States Constitution or federal statutes.

First Amendment

Plaintiff contends that Defendant violated his First Amendment rights when Defendant placed him in SNU 1 in "retaliation and punishment for legal actions taken against Feild and other staff personnel for constitutionally protected activities for redress of grievances and other proper purposes or otherwise criticizing Feild and other prison officials." Complaint at 5. In response, Defendant claims that the decision to place Plaintiff in SNU 1 was made as the result of his suspicion that Plaintiff was not taking his proscribed anti-psychotic medication and his belief that leaving Plaintiff in the general prison population would put him in danger. See Complaint, Exhibit 1. Defendant was also concerned about Plaintiff's increased anger and agitation when prison staff tried to talk to him, as evidenced by the incidents with CO Clayton and Counselor Whitley.

For Plaintiff to prevail on a retaliation claim, he must prove that he engaged in protected activity and that this conduct was a substantial factor in Defendant's decision to place him in SNU 1. See Mt. Healthy Bd. of Educ. v. Doyle, 429 U.S. 274, 287 (1977); Anderson, 125 F.3d 148 at160.[2] Filing an administrative grievance or a civil action has been found to constitute an exercise of First Amendment rights. See Hill v. Blum, 916 F. Supp. 470, 473-74 (E.D. Pa. 1996).

[2] "[A]n otherwise legitimate and constitutional government act can become unconstitutional when an individual demonstrates that it was undertaken in retaliation for his exercise of First Amendment speech." Anderson v. Davila, 125 F.3d 148, 161 (3d Cir. 1997).

Defendant moves for Summary Judgment arguing that Plaintiff did not engage in any protected act against which Defendant could retaliate.[3] In response, Plaintiff raises three new arguments in support of his claim of First Amendment retaliation: (1) that Defendant's placement of Plaintiff in SNU 1 was "motivated by the fact that Plaintiff was being a lawyer and doing a lot of legal things," Plaintiff's Brief in Opposition to Defendants' Motion for Summary Judgment ("Opposition") at 7; (2) that Plaintiff put Defendant on notice of his intention to file a lawsuit against him after Defendant announced that Plaintiff was being transferred to SNU 1 and that such notice constitutes protected activity, id. at 18; and, (3) that Plaintiff's "incidents" with CO Clayton and Counselor Whitley were in fact the first step in the grievance filing process and thus, protected activity.

A. Plaintiff's Legal Services

Plaintiff's eleventh hour claim that he was placed in SNU 1 because he was "being a lawyer and doing a lot of legal things" is without merit.[4] By his own admission Plaintiff did not file any grievances or legal actions related to this action prior to his placement in SNU 1.

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[3] Although the grievance forms attached to Plaintiff's Complaint are all dated subsequent to his placement in SNU 1, this Court denied Defendants' Motion to Dismiss the First Amendment claim in its March 10 Order, finding that "nothing in the Complaint forecloses the possibility that Plaintiff had filed other grievances in advance of being placed in the SNU." Since that time, however, Plaintiff has admitted that he filed only one grievance prior to his being placed in SNU 1 and that it was completely unrelated to the present lawsuit. Lentz Dep. at 37:13-15. In addition, Plaintiff notes in his Complaint that he has never brought a formal legal action against any of the named Defendants. Complaint at 4.

[4] Until this allegation found its way into Plaintiff's Opposition, there was no indication from any of the pleadings that the alleged retaliation Plaintiff suffered was the result of the legal work he performed on his own behalf or on behalf of other inmates.

Accordingly, he could not have suffered retaliation for legal work he performed on his own behalf.[5]

Moreover, it has been held that a prisoner has no First Amendment right to provide legal assistance to other inmates. Shaw v. Murphy, 532 U.S. 223, 231 (2001). Thus, even if Plaintiff had been punished for providing legal services to other inmates, he had no constitutionally protected right to do so and his claim of retaliation on this basis must fail.

B. Plaintiff's Notice of His Intent to File a Lawsuit

Plaintiff also argues that he put Defendant on notice of his intent to file a lawsuit against him during their meeting on May 21, 2002. Plaintiff cites Anderson v. Davila as authority to support his claim that giving notice of one's intent to file a grievance is sufficient to invoke the protection of the First Amendment right to be free from retaliation for filing grievances or legal actions. Opposition at 17. However, Plaintiff admits in his Opposition that he stated his intention to file a lawsuit against Defendant after Defendant announced that Plaintiff was being placed in SNU 1. Id. at 16. In Anderson, the notice of the intention to sue came before the retaliatory act. Accordingly, Defendant's decision to place Plaintiff in SNU 1 could not have been made in retaliation for Plaintiff's giving notice that he intended to sue him.

C. Plaintiff's "Incidents" with Prison Staff

Finally, Plaintiff contends that the "incidents" he had with CO Clayton and Counselor Whitley were in fact the first step in the grievance filing process and thus can be considered

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[5] In his Opposition brief, Plaintiff makes a passing reference to the fact that he filed a writ of Habeas Corpus, but does not allege that Defendant knew of Plaintiff's petition, much less that he retaliated against him for filing it.

grievances for purposes of First Amendment retaliation analysis. Plaintiff provides no authority in support of such a proposition.[6]

Because Plaintiff has failed to allege any act that would have brought him under the protection of the First Amendment, his retaliation claim must fail.[7] Accordingly, the Court will grant Defendant's Motion for Summary Judgment.

IV. Conclusion

For the foregoing reasons, Defendant's Motion for Summary Judgment will be granted. An appropriate Order follows.

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[6] One court in the Southern District of New York has indicated in dicta that "the administrative remedies for which an inmate enjoys a First Amendment right of petition are limited to those set forth under state administrative law, such as sending a complaint to a state bureau of prisons, as opposed to informal or intra-prison complaints." Bowman v. City of Middletown, 91 F.Supp. 2d 644, 664 (S.D.N.Y. 2000).

[7] The Court need not reach Defendant's qualified immunity defense because Plaintiff has failed to establish a First Amendment claim.

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ORDER

AND NOW, this 18th day of January, 2006, upon consideration of Defendant Francis Feild's Motion for Summary Judgment (docket no. 29), it is **ORDERED** that the Motion is **GRANTED** for the reasons set forth in the accompanying memorandum. Judgment is entered in favor of Defendant. The Clerk of the Court shall mark the case **CLOSED**.

BY THE COURT:

/s/ Bruce W. Kauffman

BRUCE W. KAUFFMAN, J.